

1 HONORABLE MARSHA J. PECHMAN  
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7 UNITED STATES DISTRICT COURT  
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WESTERN DISTRICT OF WASHINGTON

JOSIAH HUNTER,

Plaintiff,

v.

CITY OF FEDERAL WAY, FEDERAL WAY  
POLICE DEPARTMENT, FEDERAL WAY  
POLICE OFFICER KRIS DURRELL,  
FEDERAL WAY POLICE CHIEF ANDY J.  
HWANG, JOHN DOE AND JANE DOE  
OFFICERS,

Defendants.

NO. 2:16-cv-01445-MJP

AMENDED ~~PROPOSED~~ PRETRIAL  
ORDER

**JURISDICTION**

Jurisdiction is vested in this Court by virtue of 28 U.S.C. § 1331 and 28 U.S.C. § 1367. The plaintiff is bringing a 42 U.S.C. § 1983 claim against defendant Kris Durell, as well as a companion assault claim against Officer Durell and his employer, the City of Federal Way.

**CLAIMS AND DEFENSES**

The plaintiff will pursue the following claims:

AMENDED PROPOSED PRETRIAL ORDER  
(2:16-cv-01445-MJP) - 1

CHRISTIE LAW GROUP, PLLC  
2100 WESTLAKE AVENUE N., SUITE 206  
SEATTLE, WA 98109  
206-957-9669

1. A claim against Officer Kris Durell and the City of Federal Way under 42 U.S.C. § 1983 for excessive force in violation of plaintiff's Fourth Amendment rights<sup>1</sup>; and

2. A state law claim for assault against Officer Durell for his conduct and against the City of Federal Way under a theory of vicarious liability.

The defendants will assert the following affirmative defenses:

1. Officer Durell is entitled to qualified immunity; and
3. Plaintiff failed to mitigate his damages.

### **ADMITTED FACTS**

The following facts are admitted by the parties:

A. Josiah Hunter and Junior Beausilien were at the AM/PM located on 320th and Pacific Highway South on September 14, 2014.

B. Josiah Hunter and Junior Beauislien either heard or witnessed a near head-on collision. Josiah Hunter and Junior Beausilien went to the scene of the accident.

C. A group of civilians began to congregate near the scene of the accident near the site of the collision, which included Josiah Hunter and Junior Beasulien.

D. Mr. Hunter and Mr. Beausilien were at the scene of the collision before any police officers.

E. Officer Durell was the first police officer to respond to the scene of the accident.

F. It appeared that Travis Wells was intoxicated.

<sup>1</sup> Defendants object to any assertion that there is a pending 42 U.S.C. § 1983 claim against the City of Federal Way. The Court previously dismissed that claim at summary judgment.

G. Mr. Hunter and Mr. Beausilien told Officer Durell they were not involved in the accident.

H. Mr. Hunter picked Mr. Wells' wallet up off the ground during the course of Mr. Wells' arrest by Officer Durell, and returned the wallet back to the ground when so ordered by Officer Durell.

## **ISSUES OF LAW**

The following are the issues of law to be determined by the Court:

1. Did Officer Kris Durell use excessive force in violation of Mr. Hunter's Fourth Amendment rights when he used a control hold (LVNR) during the course of Mr. Hunter's lawful arrest?

2. If Officer Durell is liable for excessive force under 42 U.S.C. § 1983, is Officer Durell entitled to qualified immunity?

## **EXPERT WITNESSES**

- a) The parties do not believe that a limitation on the number of expert witnesses is necessary.
- b) The names and addresses of the expert witnesses to be used by each party at trial and the issues upon which each will testify are:

**On behalf of the plaintiff:**

(1) Gregory G. Gilbertson  
4722 Snow Grass Place NE  
Olympia, WA 98516-6258

Mr. Gilbertson is a police trainer, private investigator and professor, and he has been offered to testify regarding police practices and procedures pertaining and the reasonableness of the force used by Officer Durell to effect Mr. Hunter's arrest.

1                   **On behalf of defendants:**

2                   (2)     Thomas F. Ovens  
3                   2203 Airport Way S., Building C  
4                   Seattle, WA 98134  
5                   425-221-5095

6                   Mr. Ovens is a police practices expert, who will testify regarding the objective  
7                   reasonableness of Officer Durell's actions at issue in this case, as well as commonly accepted and  
8                   practiced police policies and procedures. Mr. Ovens' opinions and evaluations are set forth in  
9                   Defendant's Rule 26(a)(2) Expert Witness Disclosure.

10                   **OTHER WITNESSES**

11                   The plaintiff anticipates calling the following witnesses at trial:

12                   1.     Josiah Hunter (will testify)  
13                   c/o Counsel James Bible  
14                   14205 SE 36th Street Suite 100  
15                   Bellevue, WA 98006  
16                   (425) 519-3675

17                   Mr. Hunter is the plaintiff in this case. Mr. Hunter has information relevant to the facts  
18                   and circumstances related to this case.

19                   2.     Junior Beausilien (will testify)  
20                   2806 Pacific Hwy S  
21                   Federal Way, WA 98003  
22                   (253) 245-4821

13                   Mr. Beausilien was present for the events that form the bases for the claims that were filed  
14                   by the plaintiff. He has information and knowledge relating to the facts and circumstances  
15                   surrounding this case, and as to Mr. Hunter's claim.

16                   3.     Travis Wells (possible witness only)  
17                   618 28 Ave E  
18                   Seattle, WA 98112

19                   Mr. Wells was involved in the September 14, 2014 collision. He may have information  
20                   related to the events leading up to Mr. Hunter's arrest.

1           4. Officer Kris Durell (will possibly testify)  
2           c/o Christie Law Group, PLLC  
3           21000 Westlake Aven. N., Ste. 206  
4           Seattle, WA 98109  
5           206-957-9669

6           Officer Kris Durrell is a defendant in this case. He has knowledge of the facts and  
7           circumstances leading up to Mr. Hunter's arrest and about the force used during the course of that  
8           arrest.

9           5. Officer Charlie Hinckle (will possibly testify)  
10           c/o Christie Law Group, PLLC  
11           2100 Westlake Ave. N., Ste 206  
12           Seattle, WA 98109  
13           (206) 957-9669

14           Officer Hinckle was a responding officer. He has knowledge of the facts and circumstances  
15           leading up to and during Mr. Hunter's arrest.

16           6. Officer Keith Schmidt (will possibly testify)  
17           c/o Christie Law Group, PLLC  
18           2100 Westlake Ave. N., Ste 206  
19           Seattle, WA 98109  
20           (206) 957-9669

21           Officer Schmidt was a responding officer. He has knowledge of the facts and circumstances  
22           leading up to and during Mr. Hunter's arrest.

23           7. Officer Matt Novak (will possibly testify)  
24           c/o Christie Law Group, PLLC  
25           2100 Westlake Ave. N., Ste 206  
26           Seattle, WA 98109  
27           (206) 957-9669

28           Officer Novak was a responding officer. He has knowledge of the facts and circumstances  
29           leading up to and during Mr. Hunter's arrest.

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AMENDED PROPOSED PRETRIAL ORDER  
(2:16-cv-01445-MJP) - 5

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1       8.    Janet Stewart (will possibly testify)  
2           2716 S 275 place  
3           Federal Way, WA 98003  
4           253-946-4306

5       Ms. Stewart was listed as a witness in a police report and may have information related to  
6       Mr. Hunter's claims.

7       9.    Dennis Watson (will possibly testify)  
8           32219 8 Avenue South  
9           Federal Way, WA 98003  
10          253-202-6335

11       Mr. Watson is listed as a witness in a police report and may have information related to  
12       Mr. Hunter's claims.

13       10.   Andrew Krahn (will possibly testify)  
14          17932 Jordan St SW  
15          Rochester, WA 98579

16       Mr. Krahn is listed as a witness in a police report and may have information related to Mr.  
17       Hunter's claims.

18       11.   Thomas Hart (will possibly testify)  
19          25803 19th Av South  
20          Des Moines, WA 98158  
21          (253) 394-1001

22       Mr. Krahn is listed as a witness in a police report and may have information related to Mr.  
23       Hunter's claims.

24       12.   Sanetta Hunter (will testify)  
25          c/o James Bible Law Group  
26          14205 SE 36th Street Suite 100  
27          Bellevue WA 98006

28       Sanetta Hunter is the mother of the plaintiff and may have information related to his  
29       claimed damages.

30       ///

31       ///

32       AMENDED PROPOSED PRETRIAL ORDER  
33       (2:16-cv-01445-MJP) - 6

34       **CHRISTIE LAW GROUP, PLLC**  
35       2100 WESTLAKE AVENUE N., SUITE 206  
36       SEATTLE, WA 98109  
37       206-957-9669

1       13.   Corazon Pajarillo (will possibly testify)  
2                   31223 20th Avenue South # B103  
2                   Federal Way Washington

3                   Plaintiff intends to call Ms. Pajarillo to testify about her communications with Officer  
4                   Schmidt before Mr. Hunter's arrest.

4       14.   Michael Anderson (may possibly testify)  
5                   5119 N. Shirley Street  
6                   Ruston, Washington

6                   Plaintiff intends to call Mr. Anderson to testify about his observations at the scene of the  
7                   car accident and his observations of Josiah Hunter and Junior Beausilien.

8                   **On behalf of the defendants:**

9                   The defendants anticipate calling the following witnesses at trial, all of which have been  
10                  previously identified above:

10       1.   Josiah Hunter (may testify for the defense)  
11       2.   Junior Beausilien (may testify for the defense)  
12       3.   Officer Kris Durell (will testify)  
13       4.   Officer Keith Schmidt (will testify)  
14       5.   Officer Charlie Hinckle (will testify)  
15       6.   Officer Matt Novak (may possibly testify)  
16       7.   Michael Anderson (may possibly testify)

17                   The defendants may also call the following witness:

18       8.   Chief Andy Hwang (may possibly testify)  
19                   c/o Christie Law Group, PLLC  
20                   21000 Westlake Avenue N., Ste. 206  
21                   Seattle, WA 98109  
22                   206-957-9669

21                   Chief Hwang is the representative for the City of Federal Way and plans to sit at counsel  
22                  table through trial. He may be called to testify regarding the Federal Way Police Department's

1 policies, practices, and procedures, and training, if necessary.

2

**EXHIBITS**

3

**(a) Admissibility stipulated:**

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**Plaintiff's Exhibits**

5	Ex. No.	Bates Number	Document
6	1*	001088-001093	Officer Kris Durell's Police Report
7	2*	001096-001098	Officer Charlie Hinckle's Police Report
8	6*	001094-001096	Officer Keith Schmidt's Police Report
9	8A	001526	Car Accident Photograph
10	8B	001527	Car Accident Photograph
11	8C	001528	Car Accident Photograph
12	8D	001529	Car Accident Photograph
13	8E	001530	Car Accident Photograph
14	8F	001531	Car Accident Photograph
15	8G	001532	Car Accident Photograph
16	8H	001533	Car Accident Photograph
17	8I	001534	Car Accident Photograph
18	8J	001535	Car Accident Photograph
19	8K	001536	Car Accident Photograph
20	8L	001537	Car Accident Photograph
21	8M	001538	Car Accident Photograph
22	8N	001339	Car Accident Photograph
23	8O	001540	Car Accident Photograph
24	8P	001541	Car Accident Photograph
25	8Q	001542	Car Accident Photograph
26	8R	001543	Car Accident Photograph
27	8S	001544	Car Accident Photograph
28	8T	001545	Car Accident Photograph
29	8U	001546	Car Accident Photograph
30	8V	001547	Car Accident Photograph
31	8W	001548	Car Accident Photograph
32	8X	001549	Car Accident Photograph
33	10	B001722	Video of the Accident
34	14*	B001751-B001757	DUI Arrest Report
35	15*	001104-001105	Use of Force Review

\* The parties agree that these police reports and the Use of Force Review form should be pre-

1 marked and included in the exhibit notebooks for ease of reference at trial, either as writings used  
2 to refresh recollection or documents available for impeachment purposes. The parties also agree  
3 that these documents should not be offered into evidence or submitted to the jury for their  
consideration at deliberation. If a party feels differently at trial, the exhibit should be treated as  
one with admissibility disputed.

4 **Defendants' exhibits:**

5 <b>Ex. No.</b>	6 <b>Bates Number</b>	7 <b>Document</b>
100	001101-001103	September 14, 2014 CAD Report
101	001722	Aerial Image of Intersection
102	001723	Close-Up Aerial Image of Intersection
103	001724	Angled Image of Intersection
104	001725	Image of AM/PM
105	HUNTER 000002	Josiah Hunter's September 2014 Phone Records
106	Hunter, Deposition Exhibit No. 2	Aerial Photograph of the Scene with markings

10 **(b) Authenticity stipulated, admissibility disputed:**

11 **Plaintiff's Exhibits**

12 <b>Ex. No.</b>	13 <b>Bates Number</b>	14 <b>Document</b>
3	001099-001100	Corazon Pajarillo's October 20, 2014 Statement
4	B001761-B001762	Vehicle Report
5	B01723-B001725	Federal Way Municipal Court First Amended Complaint. Count I, II, and III
7	B001726-B001728	Commander Casey Jones' November 7, 2014 Memorandum
9A	B001720	Aerial Photograph of the Scene
9B	B001721	Aerial Photograph of the Scene
11	B01729-001747	Defendant's Objections, Answers, and Responses to Plaintiff's Interrogatories and Requests for Production
12	B001748-001749	Michael Anderson's September 14, 2014 Statement
13	B001750	Court Order dismissing Mr. Hunter's Criminal Charges
16	B001758	Notice of Trespass - Hunter
17	001759	Notice of Trespass – Beausilien

20 **(c) Authenticity and admissibility disputed:**

21 None.

22 AMENDED PROPOSED PRETRIAL ORDER  
(2:16-cv-01445-MJP) - 9

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## DEPOSITION EXCERPTS

2 Pursuant to LCR 32(e), the parties submit the attached deposition designations of plaintiff  
3 Josiah Hunter and defendant Kris Durell and the related objections and responses.

## **ACTION BY THE COURT**

5 (a) This case is scheduled for trial before a jury on July 9, 2018 at the United States  
6 District Court for the Western District of Washington at Seattle.

(b) Trial briefs shall be submitted to the Court on or before Wednesday, June 27, 2018.

8 (c) Jury instructions requested by either party shall be submitted to the Court on or  
9 before Wednesday, June 27, 2018. Suggested questions of either party to be asked of the jury by  
10 the Court on voir dire shall be submitted to the Court on or before Wednesday, June 27, 2018.

11 This Order has been approved by the parties as evidenced by the signatures of their counsel.

12 This Order shall control the subsequent course of the action unless modified by a subsequent order.

13 This Order shall not be amended except by order of the Court pursuant to agreement of the parties

14 or to prevent manifest injustice.

15 DATED this 6 day of July, 2018.

HON. MARSHA J. PECHMAN  
U.S. DISTRICT JUDGE

AMENDED PROPOSED PRETRIAL ORDER  
(2:16-cv-01445-MJP) - 10

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Respectfully submitted,

## CHRISTIE LAW GROUP, PLLC

BY: /s/ Ann E. Trivett  
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Telephone: (206) 957-9669  
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Attorney for Plaintiff

BY: /s/ Jesse Valdez  
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Valdez Lehman, PLLC  
600 108<sup>th</sup> Avenue NE, Suite 347  
Bellevue, WA 98004  
Email: jess@valdezlehman.com  
Attorney for Plaintiff

1  
**CERTIFICATE OF SERVICE**

2 I hereby certify that on June 28, 2018, I caused a true and correct copy of the foregoing  
3 document to be served upon the following in the manner indicated below:

4 James Bible, WSBA #33985  
5 James Bible Law Group  
6 14205 SE 36<sup>th</sup> Street, Suite 100  
7 Bellevue, WA 98006  
8 Email: [jbiblesblaw@gmail.com](mailto:jbiblesblaw@gmail.com)  
9 Attorney for Plaintiff  
10 *Via Email*

11 Jesse Valdez, WSBA #35378  
12 Valdez Lehman, PLLC  
13 600 108<sup>th</sup> Avenue NE, Suite 347  
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15 Email: [jess@valdezlehman.com](mailto:jess@valdezlehman.com)  
16 Attorney for Plaintiff  
17 *Via Email*

18 J. Ryan Call, WSBA #32815  
19 Acting City Attorney  
20 City of Federal Way  
21 33325 Eighth Ave. S.  
22 Federal Way, WA 98003  
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*Via Email*

16 CHRISTIE LAW GROUP, PLLC  
17

18 /s/ Ann E. Trivett  
19 ANN E. TRIVETT, WSBA #39228  
20 Attorney for Defendants  
21  
22

AMENDED PROPOSED PRETIRAL ORDER  
(2:16-cv-01445-MJP) - 12

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